

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/25/09

A Bill

HOUSE BILL 2086

5 By: Representative B. Wilkins
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For An Act To Be Entitled

9 AN ACT TO AMEND THE CRIME OF FINANICAL IDENTITY
10 FRAUD; AND FOR OTHER PURPOSES.
11

Subtitle

12 TO AMEND THE CRIME OF FINANCIAL IDENTITY
13 FRAUD.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 5-37-227 is amended to read as follows:

20 5-37-227. Financial identity fraud – Nonfinancial identity fraud –
21 Restitution – Venue.

22 (a) A person commits financial identity fraud if, with the intent to:

23 (1) Create, obtain, or open a credit account, debit account, or
24 other financial resource for his or her benefit or for the benefit of a third
25 party, he or she accesses, obtains, records, or submits to a financial
26 institution another person's identifying information for the purpose of
27 opening or creating a credit account, debit account, or financial resource
28 without the authorization of the person identified by the information; or

29 (2) Appropriate a financial resource of another person to his or
30 her own use or to the use of a third party without the authorization of that
31 other person, the actor:

32 (A) Uses a scanning device; or

33 (B) Uses a re-encoder.

34 (b) A person commits nonfinancial identity fraud if he or she
35 knowingly obtains another person's identifying information without the other
36 person's authorization and uses the identifying information for any unlawful



1 purpose, including without limitation:

2 (1) To avoid apprehension or criminal prosecution;

3 (2) To harass another person; ~~or~~

4 (3) To obtain or to attempt to obtain a good, service, real
5 property, or medical information of another person; or

6 (4) To obtain employment.

7 (c) As used in this section:

8 (1) "Disabled person" means the same as defined in § 4-88-201;

9 (2) "Elder person" means the same as defined in § 4-88-201;

10 (3) "Financial institution" includes, but is not limited to, a
11 credit card company, bank, or any other type of lending or credit company or
12 institution;

13 (4) "Financial resource" includes, but is not limited to, a
14 credit card, debit card, or any other type of line of credit or loan;

15 (5) "Identifying information" includes, but is not limited to,

16 a:

17 (A) Social security number;

18 (B) Driver's license number;

19 (C) Checking account number;

20 (D) Savings account number;

21 (E) Credit card number;

22 (F) Debit card number;

23 (G) Personal identification number;

24 (H) Electronic identification number;

25 (I) Digital signature; or

26 (J) Any other number or information, including name or
27 date of birth, that can be used to access a person's financial resources or
28 cause a financial liability to be assessed to the other person;

29 (6) "Re-encoder" means an electronic device that places encoded
30 information from the magnetic strip or stripe of a payment card onto the
31 magnetic strip or stripe of a different card; and

32 (7) "Scanning device" means a scanner, reader, or any other
33 electronic device that is used to access, read, scan, obtain, memorize, or
34 store, temporarily or permanently, information encoded on the magnetic strip
35 or stripe of a payment card.

36 (d) The provisions of this section do not apply to any person who

1 obtains another person's driver's license or other form of identification for
2 the sole purpose of misrepresenting the actor's age.

3 (e)(1) Except as provided in subdivision (e)(2) of this section,
4 financial identity fraud is a Class C felony.

5 (2) Financial identify fraud is a Class B felony if the victim
6 is an elder person or a disabled person.

7 (f)(1) Except as provided in subdivision (f)(2) of this section,
8 nonfinancial identity fraud is a Class D felony.

9 (2) Nonfinancial identity fraud is a Class C felony if the
10 victim is an elder person or a disabled person.

11 (g) It is not a defense a prosecution under subdivision (b)(4) of this
12 section that the prospective employer knew that the identity given was false
13 or that the person whose identity was used falsely consented to its use by
14 the person.

15 ~~(g)~~(h)(1) In addition to any penalty imposed under this section, a
16 violation of this section constitutes an unfair or deceptive act or practice
17 as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

18 (2) Any remedy, penalty, or authority granted to the Attorney
19 General or another person under the Deceptive Trade Practices Act, § 4-88-101
20 et seq., is available to the Attorney General or that other person for the
21 enforcement of this section.

22 ~~(h)~~(i)(1)(A) In addition to any penalty imposed under this section,
23 upon conviction for financial identity fraud or nonfinancial identity fraud,
24 a court may order the defendant to make restitution to any victim whose
25 identifying information was appropriated or to the estate of the victim under
26 § 5-4-205.

27 (B) In addition to any other authorized restitution, the
28 restitution order described in subdivision ~~(h)~~(i)(1)(A) of this section may
29 include without limitation restitution for the following financial losses:

30 (i) Any costs incurred by the victim in correcting
31 the credit history or credit rating of the victim; and

32 (ii) Any costs incurred in connection with any civil
33 or administrative proceeding to satisfy any debt, lien, or other obligation
34 resulting from the theft of the victim's identifying information, including
35 lost wages and attorney's fees.

36 (C) The court also may order restitution for financial

1 *loss to any other person or entity that suffers a financial loss from a*
2 *violation of subsection (a) or (b) of this section.*

3 *(2) A judgment entered under this section and § 5-4-205 does not*
4 *bar a remedy available in a civil action to recover damages relating to*
5 *financial identity fraud or nonfinancial identity fraud.*

6 *~~(i)~~(j) Venue for any criminal prosecution under this section or any*
7 *civil action to recover damages relating to financial identity fraud or*
8 *nonfinancial identity fraud is proper in any of the following venues:*

9 *(1) In the county where the violation occurred;*

10 *(2) If the violation was committed in more than one (1) county,*
11 *or if the elements of the offense were committed in more than one (1) county,*
12 *then in any county where any violation occurred or where an element of the*
13 *offense occurred;*

14 *(3) In the county where the victim resides; or*

15 *(4) In the county where property that was fraudulently used or*
16 *attempted to be used was located at the time of the violation.*

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21 */s/ B. Wilkins*
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